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IN THE
Supreme Court of the United States

RICHARD ARMSTRONG AND LISA HETTINGER,
Petitioners,

v.

EXCEPTIONAL CHILD CENTER, INC., et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF MEMBERS OF CONGRESS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*[1]

Amici, Senate Majority Leader Harry Reid, House Democratic Leader Nancy Pelosi, Senator Tom Harkin, Senator Patty Murray, Senator Ron Wyden, Representative Henry A. Waxman, Representative Sander M. Levin, Representative George Miller, and Representative Frank Pallone, Jr., are a group of current Members of Congress who support private rights of action for equitable relief in this context.[2] The personal experiences of *amici*, as Members of Congress who have worked extensively on legislation and oversight of Federal health programs, including those authorized under Titles XVIII (Medicare) and XIX (Medicaid) of the Social Security Act, provide insight into Congress's intent to preserve prospective relief to vindicate the supremacy of the Medicaid Act over contrary state legislation. *Amici* are uniquely situated to do so.

Amici support the argument of Respondents that Congress intended to preserve the private cause of action for equitable relief to vindicate the supremacy of Medicaid conditions over contrary state action. *Amici* explain that Congress relied on this Court's longstanding practice of hearing these causes of action, except where statutes expressly barred them. In

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[1] No person or entity other than *amici* and their counsel made a monetary contribution to the preparation or submission of this brief. Counsel of record for the parties have consented to the filing of this brief, and letters of consent have been filed with the clerk.

[2] Many of these Members of Congress also participated as *amici* in *Douglas v. Independent Living Center of Southern California, Inc.*, Nos. 09-958, 09-1158, and 10-283.

contrast, the approach suggested by Idaho and the Solicitor General would upend centuries of settled understanding and would undermine the effectiveness of Medicaid. *Amici* believe that such suits are critical to protect the intended beneficiaries of Medicaid—the Medicaid recipients. Allowing for prospective relief in this context supplements the agency's limited enforcement resources, and can be a more effective measure than using administrative means to cut off federal funding to the program. Because Section 30(A) is no different than any of the dozens of other Congressional enactments that this Court has allowed to be enforced through the Supremacy Clause, the judgment below should be affirmed.

SUMMARY OF ARGUMENT

Nearly 75 years ago, Justice Cardozo set forth the basic principle that when "[federal] money is spent to promote the general welfare, the concept of welfare or the opposite is shaped by Congress, not the states." *Helvering v. Davis*, 301 U.S. 619, 645 (1937). This case implicates not only that venerable principle, but one of even older vintage: the right to seek equitable relief under the Supremacy Clause against state law that is inconsistent with Congressional enactments.

Having chosen to participate in Medicaid, Idaho is obligated to fund the Medicaid program that Congress enacted. Respondents, who receive Medicaid payments for providing residential habilitation services to individuals in Idaho, contend that Idaho has not complied with its funding obligations. For nearly 200 years this Court has heard claims under the Supremacy Clause seeking prospective relief based on preemption

of inconsistent state law without ever requiring an express cause of action from Congress to do so. Now, Idaho, joined by the Solicitor General, asks this Court to hold for the first time that a federal provision, Section 30(A), is not enforceable in a private suit seeking equitable relief. This Court should reject that position for four reasons.

First, Congress has relied on this Court's unbroken practice of permitting suits for equitable relief under the Supremacy Clause. Congress is fully capable of stating when it does not want an enactment to be construed as displacing state law. But when Congress does not so state, it has long understood that an action for equitable relief will be available to individuals harmed by state law that is inconsistent with federal law. Idaho's broad argument that such relief is available only when Congress has provided an express cause of action is irreconcilable with the many cases from this Court allowing such relief without ever requiring the plaintiff to identify a right of action. And it is also irreconcilable with this Court's practice of presuming that equitable relief is available under *Ex parte Young* unless Congress affirmatively indicates otherwise. *See infra* Part I.

Second, the efforts of Idaho and the Solicitor General to distinguish Section 30(A) on the ground that it imposes obligations under the Spending Clause are unavailing. This Court has routinely allowed Supremacy Clause actions to enforce obligations incurred under the Spending Clause. Indeed, this Court not long ago affirmed the availability of that very relief in a case in which the plaintiffs argued that state

regulation was preempted by Medicaid. *See PhRMA v. Walsh*, 538 U.S. 644, 662-74 (2003). Moreover, the Spending Clause context provides greater reason, not less, to allow preemption actions. Idaho and the Solicitor General assert that the proper remedy here is for the United States to cut off funding to a state that does not comply with its Medicaid obligations. But that would only dramatically exacerbate the problems of Medicaid recipients in Idaho. In contrast, allowing private attorneys general to supplement the agency's enforcement powers provides a remedy that is consistent with Congress's goals and vindicates the supremacy of federal law. Nor can Petitioners plausibly contend that affirming the result below would open the floodgates to additional suits. To the contrary, an affirmance would simply preserve the *status quo*, which the courts have had no difficulty managing. *See infra* Part II.A &B.

Third, Idaho and the Solicitor General are wrong when they contend that a preemption claim is improper here because Respondents are seeking a benefit rather than invoking an immunity. When a state receives federal funds, Congress is equally concerned that a state comply with *all* the conditions attached to those funds, whether they limit how a state may regulate, or obligate the state to provide a certain standard of benefits. *See infra* Part II.C.

Fourth, the argument that there is no right to enforce Section 30(A) under the Supremacy Clause is particularly weak because Congress has repeatedly debated whether to eliminate Section 30(A) and/or bar private rights of action, and it has consistently refused

to do so, even as it has eliminated other rights-giving provisions in Medicaid. *See infra* Part III. Congress has expressly chosen to maintain Section 30(A) knowing full well that it provides enforceable rights. This Court should not override that decision, especially when doing so would require overturning two centuries of case law.

ARGUMENT

I. CONGRESS HAS RELIED ON THIS COURT'S LONG TRADITION OF ALLOWING PRIVATE SUITS FOR EQUITABLE RELIEF UNDER THE SUPREMACY CLAUSE.

When Congress legislates, it does so with an understanding of the legal principles that will govern the interpretation of what it enacts. *Amici* can attest to the truth of that statement based on their extensive legislative experience. And it is correct as well as a matter of law under this Court's well-settled doctrines. *See, e.g., South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 351 (1998) ("We assume that Congress is aware of existing law when it passes legislation.") (quoting *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32, (1990)). For example, when Congress uses a term drawn from the common law, this Court understands that usage indicates Congress's intent to incorporate the term's common law gloss. *E.g., Scheidler v. Nat'l Org. for Women, Inc.*, 537 U.S. 393, 402 (2003). Likewise, when Congress chooses *not* to amend a statute in the face of a judicial construction, it can be presumed to have acceded to the interpretation this Court articulated. *E.g., Microsoft Corp. v. i4i Ltd. P'ship*, 131 S. Ct. 2238, 2252 (2011).

The question in this case is whether Congress intended to allow suits under the Supremacy Clause to remedy state law inconsistent with the obligations imposed by Section 30(A) of the Medicaid Act. And for 200 years this Court's decisions have indicated that such relief is available to vindicate the supremacy of federal law in the absence of an express provision to the contrary. The line of authority establishing this proposition encompasses some of this Court's most seminal cases, both longstanding and of more recent vintage, concerning the preeminence of federal authority. *See, e.g., State v. Wilson*, 11 U.S. (7 Cranch) 164, 166 (1812) (suit initially brought in state court challenging state tax as unconstitutional under Contracts Clause); *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824) (suit to enjoin state tax as unconstitutional under Congress's Article I power to constitute Bank of United States); *City of Walla Walla v. Walla Walla Water Co.*, 172 U.S. 1 (1898) (finding tax unconstitutional after considering only whether the Court had jurisdiction); *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963) (exercising jurisdiction over private party claim that California statute was preempted by federal regulation); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96 n.14 (1983) (enjoining state law preempted by ERISA); *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 366 (2000) (enjoining state law restricting purchases from Burma on preemption grounds).

Congress's understanding that equitable relief is available under the Supremacy Clause has been bolstered by the consistent (until recently) position taken by the Executive Branch on this issue. The

Solicitor General contends, as it first argued in *Douglas*, that "[t]his Court has never squarely decided if or when a federal court should create or recognize a cause of action for equitable relief directly under the Supremacy Clause." SG Br. 15. But the Executive has routinely appeared in such cases in favor of federal preemption, seeking the benefit of these private suits to vindicate the supremacy of federal law. *See, e.g.*, Brief for the United States as *Amicus Curiae*, *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363 (2000) (No. 99-474), 2000 WL 194805; Brief for the United States as *Amicus Curiae*, *District of Columbia v. Greater Washington Bd. of Trade*, 506 U.S. 125 (1992) (No. 91-1326), 1992 WL 12012049 (filing on behalf of private plaintiffs seeking declaratory judgment that state law is preempted by ERISA).

Indeed, even when the Solicitor General has argued that the state law was not preempted by federal law—thus arguing against the private plaintiffs' interest—prior to *Douglas*, the Executive had never suggested that the plaintiffs lacked a cause of action. *See, e.g.*, Brief for the United States as *Amicus Curiae*, *Cal. Div. of Labor Standards Enforcement v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316 (1997) (No. 95-789), 1996 WL 340772 (arguing against federal preemption where plaintiffs sought declaratory judgment that ERISA preempted state enforcement action, but failing to raise cause of action question); Brief for the United States as *Amicus Curiae*, *Carleson v. Remillard*, 406 U.S. 598 (1971) (No. 70-250), 1971 WL 133367 (opposing private plaintiffs on Social Security Act preemption of state welfare regulation, but not addressing cause of action); Brief for the United States as *Amicus Curiae*,

Cal. Dep't of Human Res. Dev. v. Java, 402 U.S. 121 (1971) (No. 70-507), 1971 WL 147066 (same).

Congress is capable of stating when federal law is *not* intended to preempt state regulation. *See, e.g.*, 29 U.S.C. § 1144(b)(2)(A) ("[N]othing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance ."). Likewise, Congress is equally capable of expressly limiting the availability of judicial remedies, such as by providing an alternative remedial scheme. *See, e.g.*, *Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44, 74-76 (1996); *see also* Resp't Br. 45. But when Congress imposes obligations that do not contain limiting language of that sort, it relies on this Court's venerable practice of permitting suits to enjoin state laws that are preempted by federal law.

Against this background, it is thus remarkable that one of Idaho's lead arguments is that Section 30(A)'s absence of an express right of action signifies that Congress "decided" to foreclose relief under the Supremacy Clause. Pet'r Br. 18-35. This Court has *never* required an express cause of action in its Supremacy Clause cases. To the contrary, this Court has remained steadfastly open to suits for purely prospective relief as a critical but limited safeguard, even while becoming more guarded against suits that seek monetary relief. For example, since this Court held in *Cort v. Ash*, 422 U.S. 66 (1975), that it would apply a more stringent test for implying rights of action in federal statutes, there have been no fewer than nine cases in which this Court has upheld injunctive relief

under the Supremacy Clause.[3] *See, e.g., Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001); *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363 (2000); *Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25 (1996); *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88 (1992); *Memphis Bank & Trust Co. v. Garner*, 459 U.S. 392 (1983); *Ariz. Pub. Serv. Co. v. Snead*, 441 U.S. 141 (1979); *Ray v. Atl. Richfield Co.*, 435 U.S. 151 (1978); *Douglas v. Seacoast Prods., Inc.*, 431 U.S. 265 (1977); *Jones v. Rath Packing Co.*, 430 U.S. 519 (1977); *see also Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 119 (1989) (even where Section 1983 relief is unavailable, "plaintiffs may vindicate [their] pre-emption claims by seeking declaratory and equitable relief in federal district courts through their powers under federal jurisdictional statutes") (Kennedy, J., dissenting).

Instead, a comparison to the *Ex parte Young* doctrine is highly pertinent. *See Ex parte Young*, 209 U.S. 123 (1908). Far from requiring an express authorization to pursue injunctive relief under *Ex parte Young*, this Court *presumes* that Congress intends such relief to be available absent a clear indication by

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[3] During that period there were also at least seven such cases in which this Court found that injunctive relief was unwarranted. *See, e.g., Itel Containers Int'l Corp. v. Huddleston*, 507 U.S. 60 (1993); *Northwest Cent. Pipeline Corp. v. State Corp. Comm'n of Kan.*, 489 U.S. 493 (1989); *Puerto Rico Dep't of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495 (1988); *Cal. Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272 (1987); *Malone v. White Motor Corp.*, 435 U.S. 497 (1978); *Ohio Bureau of Empl. Servs. v. Hodory*, 431 U.S. 471 (1977); *United States v. County of Fresno*, 429 U.S. 452 (1977). In not one of those cases did the Court express doubt about the existence of a cause of action in the first place.

Congress to the contrary. *E.g.*, *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 647 (2002) (allowing plaintiff to pursue relief under *Ex parte Young* because statute did not "display any intent to foreclose" that relief).

Rather than addressing this anomaly directly, Idaho and the Solicitor General contend that *Ex parte Young* is not relevant here because "[s]ome have described *Ex parte Young*" as permitting a plaintiff to "anticipatorily bring a suit in equity" only in order to prevent a state from bringing its own punitive action against the *Young* plaintiff. SG Br. 18. *Accord* Pet'r Br. 42. But *Ex parte Young* is not so limited. Such suits may be brought to compel state action required by federal law, and not just to enjoin punitive action. In the highly analogous case of *Edelman v. Jordan*, for example, this Court explained that *Ex parte Young* could be used to compel state officials to comply with the federal time limits for processing and paying applicants for a federal-state aid program on a prospective basis. 415 U.S. 651, 655-56, 664-66 & n.11 (1974). The availability of injunctive relief was presumed there, even though the Court made no mention of any private right of action. The same result should hold here.

In sum, this Court has never required an express cause of action to seek preemption under the Supremacy Clause, and indeed has consistently presumed that such relief would always be available under *Ex parte Young*. This Court should not disrupt Congress's expectations by ruling that private enforcement of Section 30(A) under the Supremacy

Clause is foreclosed just because Congress did not provide an express right of action to do so.

II. Enforcement Under The Supremacy Clause Is Particularly Appropriate Where, As Here, The State's Obligations Arise Under The Spending Clause.

Idaho and the Solicitor General contend that because Section 30(A)'s obligations arise under Congress's Spending Clause authority they are inappropriate for enforcement through the Supremacy Clause. From *amici*'s perspective, that conclusion does not follow. When a state or local entity agrees to accept federal funds, it is obligated to use those funds in the manner required by Congress and to comply with any and all conditions put on the funds. As we explain, allowing such suits both comports with this Court's past practice and with common sense.

A. This Court Has Consistently Permitted Preemption Claims Seeking To Enforce Obligations Incurred Under The Spending Clause.

At the outset, it is important to recognize that notwithstanding the assertions of Idaho and the Solicitor General, this Court has never treated Spending Clause obligations differently in allowing claims to proceed under the Supremacy Clause. When Congress exercises its Spending Clause powers, inconsistent state law must give way under the Supremacy Clause, just as it must to any other enactment of Congress. *See, e.g., Lawrence Cnty. v. Lead-Deadwood Sch. Dist. No. 40-1*, 469 U.S. 256, 258 (1985) (holding that the Payment in Lieu of Taxes Act

preempted state rules mandating how local governments used the moneys); *Blum v. Bacon*, 457 U.S. 132, 138 (1982) (holding that federal regulations pursuant to the Emergency Assistance Program, which is federally funded under the Social Security Act, preempted state provisions regarding emergency assistance).

Indeed, this Court has heard numerous preemption challenges to state law under Medicaid itself. *See Wos v. E.M.A. ex rel Johnson*, 133 S. Ct. 1391, 1398 (2013) (holding that Medicaid's anti-lien provision preempted statute requiring one-third of damages recovered by beneficiary for tortious injury to be paid to state); *Ark. Dep't of Health & Human Servs. v. Ahlborn*, 547 U.S. 268, 279-80 (2006) (holding that Medicaid preempted state laws regarding liens on settlement agreements); *PhRMA*, 538 U.S. at 662-74 (examining whether a preliminary injunction was appropriate where state action was allegedly preempted by Medicaid); *Dalton v. Little Rock Family Planning Servs.*, 516 U.S. 474, 475 (1996) (per curiam) (discussing proper scope of injunctive relief while declining to grant certiorari on the question whether the Hyde Amendment preempted contrary state laws).

B. A Remedy Under The Supremacy Clause Is Particularly Useful In Spending Clause Cases.

Despite the many cases allowing Spending Clause challenges, the Solicitor General argues that the only proper remedy is for HHS to undertake a compliance action and withhold funds from states that fail to

comply with relevant federal law.[4] SG Br. 24. Having reserved to the federal government the remedy of cutting off Medicaid funds (the argument goes), Congress must not have intended that the ultimate beneficiaries of those funds be able to sue when states take action inconsistent with federal law.

That argument turns the purpose of Medicaid on its head. Medicaid is a federal program "through which the Federal Government provides financial assistance to States so that they may furnish medical care to needy individuals." *Wilder v. Va. Hosp. Ass'n*, 496 U.S. 498, 502 (1990). Withholding federal funding would make it even less likely that those "needy individuals" would receive the medical care that a state agreed to provide.

This Court considered a similar situation in *Rosado v. Wyman*, where it heard a lawsuit by individuals who received benefit payments from New York as part of Congress's Federal Aid To Families with Dependent Children program. 397 U.S. 397 (1970). The petitioner claimed that New York's method of distributing the benefits violated the terms on which the federal government provided the funds to New York. *Id.* at 399. In holding that the petitioner had a right to proceed (and prevail), Justice Harlan wrote for the Court:

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4 For its part, Idaho goes further still, arguing that a state's "depart[ure] from the Medicaid Act's reimbursement criteria" does not even constitute a failure to comply with federal law and that HHS's ability to "turn off the spigot or merely reduce the amount of federal funding" is simply a way to entreat states into complying. Pet'r Br. 52.

> We have considered and rejected the argument that a federal court is without power to review state welfare provisions or prohibit the use of federal funds by the States in view of the fact that Congress has lodged in the Department of HEW the power to cut off federal funds for noncompliance with statutory requirements. *We are most reluctant to assume Congress has closed the avenue of effective judicial review to those individuals most directly affected by the administration of its program.*

Id. at 420 (emphasis added).

So too here. It also bears emphasizing that *Rosado* was decided by the Court more than 40 years ago and the courts have not been inundated with claims. Thus contrary to the concerns that some Justices expressed in *Douglas* about opening the floodgates to private actions, *see, e.g.*, Transcript of Oral Argument at 47-49, *Douglas v. Indep. Living Ctr. of S. Cal., Inc.*, 132 S. Ct. 1204 (2012) (No. 09-958), a ruling affirming the judgment below here would simply preserve the *status quo*.

Moreover, far from being unnecessary in Spending Clause cases, allowing for private enforcement in this context is particularly useful to Congress. As the Solicitor General recognized in opposing certiorari in *Douglas*, "[a] system that relies solely on agency review may often be less effective in ensuring the supremacy of federal law than a system of agency review supplemented by private enforcement." Brief

for the United States as *Amicus Curiae* at 19, *Maxwell-Jolly v. Indep. Living Ctr. of S. Cal., Inc.*, No. 09-958 (brief filed Dec. 3, 2010), 2010 WL 4959708, *cert. granted*, 131 S. Ct. 992 (U.S. Jan. 18, 2011). Allowing for private enforcement provides a middle ground between doing nothing and cutting off funding. *See id.* (citing *Cannon v. Univ. of Chi.*, 441 U.S. 677, 705 (1979)). It assists executive agencies that may lack the resources to enforce in every individual case the obligations Congress imposes. It offers an alternate avenue of relief to the months and even years of delay between when a state implements cuts and when the agency completes its review. It provides some assurance that Congress's objectives will be realized even during administrations that may have different enforcement priorities. And in this case in particular, it provides impoverished, developmentally disabled Medicaid patients and the medical providers who serve them a means of redress in the court system that they would often not have in the political battles over budget priorities.

Put another way, there is no reason to think that Congress would have limited enforcement of Medicaid obligations to a remedy that would terminate those obligations. Idaho accepts more than $1 billion in federal Medicaid funds per year in exchange for its promise, among other things, to ensure that needy patients have access to health care. Congress authorized the expenditure of those funds because it found that they would serve important public interests. To the extent that Idaho has failed to adhere to its obligations, such failure is a reason to compel it to do so,

not a reason to abandon those interests by cutting off the program.

C. Congress Intends The Ultimate Beneficiaries Of Spending Clause Funds To Be Able To Obtain Equitable Relief When A State Fails To Comply With Its Obligations.

Idaho and the Solicitor General also offer a cluster of arguments based on the fact that Respondents are not directly regulated by Section 30(A), and instead receive their benefits from the state. Pet'rs' Br. 42-46; SG Br. 31-33. These arguments are offered in an apparent attempt to distinguish this case from the many others allowing relief under the Supremacy Clause, but they have no bearing on what Congress should be presumed to have intended.

The Solicitor General, for example, emphasizes that Section 30(A) does not regulate respondents' "primary conduct," and that respondents are seeking a benefit promised by federal law rather than an "immunity" from state regulation. SG Br. 31. Idaho similarly contends that a preemption claim may proceed only where a plaintiff seeks to mount a defense based on "immunit[y] from state regulation." Pet'rs' Br. 42.

But legislation, including Spending Clause legislation, may bestow benefits or provide immunities, and in both cases Congress intends that those provisions be followed.[5] Contrary to Idaho's argument,

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[5] For example, neither Idaho nor the Solicitor General explains how this distinction works in light of this Court's decision in *Crosby*. The state's action in that case could be characterized as either a deprivation of a benefit (*i.e.*, eligibility for a state contract)

a state is no more free to withhold a benefit it agreed to bestow as a condition of taking a grant of federal funds than it is to violate the restrictive conditions attached to those funds. *See* Pet'rs' Br. 50-52.

This Court's decision in *PhRMA v. Walsh* is instructive. In *PhRMA*, a drug company trade association sought injunctive relief against a state that had imposed certain requirements on drug companies. The trade association argued that the state's program was inconsistent with the obligations the state undertook as a condition of receiving Medicaid funds, and the program was therefore preempted by federal law. The Solicitor General filed an amicus brief in favor of preemption, and only two members of the Court expressed any doubt that a private cause of action was permissible in that context.

Idaho fails to grapple with *PhRMA*, deeming it irrelevant on the basis that "the question whether the plaintiff could maintain a cause of action directly under the Supremacy Clause" was not directly addressed. Pet'r Br. 45. The Solicitor General acknowledges that *PhRMA* "could arguably be described as similar" to this case, but contends that it is distinguishable because "the question was not whether the State had complied with obligations imposed as a condition of receiving federal Medicaid funds, but rather, whether the State's

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or the imposition of a burden (*i.e.*, increasing direct and indirect costs on companies doing business in Burma). *Compare* 530 U.S. at 366, *with id.* at 379. *Crosby* therefore shows how easy it is to collapse the purported distinction between denying benefits and imposing burdens and demonstrates that the distinction cannot separate permissible Supremacy Clause claims from impermissible ones.

invocation of its Medicaid authority to impose independent regulatory requirements on drug manufacturers was consistent with the Medicaid Act." SG Br. 32 n.12. But again, there is no reason to think that Congress would be more inclined to allow a state to fail to comply with "obligations imposed on it as a condition of receiving federal funds" than it would to allow a state to impose restrictions inconsistent with those obligations.

Idaho and the Solicitor General also advert to contract analogies and contend that because the states are the direct recipients of the federal funds, the respondents in this case are reduced to third-party beneficiaries who have no right to sue to enforce compliance with the "contract." Pet'r Br. 26-27; SG Br. 22-23. *But see* SG Br. 22 (conceding that this "Court has also recognized that neither the federal statute itself nor the resulting arrangement with a fund recipient constitutes an ordinary contract").

Amici respectfully disagree with this characterization. To be sure, the states are critical partners in providing care under Medicaid. But they are not the intended beneficiaries of Medicaid. Medicaid's purpose is to ensure that poor and developmentally disabled people have access to basic medical care by guaranteeing payment to medical providers who serve these vulnerable populations. And when a state fails to live up to its responsibilities to these beneficiaries, Congress intended to preserve the private cause of action for injunctive relief under the Supremacy Clause as a limited but critical safeguard for these beneficiaries.

This Court's decision in *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1 (1981), supports a cause of action along precisely these lines, contrary to Idaho's and the Solicitor General's reading of the case. Pet'r Br. 31-33; SG Br. 22. As Justice White's dissent in that case made clear, the only distinctive aspect of private suits under Spending Clause statutes seeking to vindicate the Supremacy Clause is the *scope* of the appropriate injunctive relief. 451 U.S. at 53-54 (White, J., dissenting). Justice White explained that such injunctions "cannot survive the State's decision to terminate its participation in the program." *Id.* This Court's holding in that case is entirely consistent with that distinction: although the Court determined that the federal statute at issue did not create substantive rights to monetary relief or "'appropriate' treatment in the 'least restrictive' environment," *id.* at 11, 29, this Court left open the possibility of injunctive relief. The majority explained that it would not "significantly differ" from (dissenting) Justice White's proposed remedy if the district court were to find on remand that the state had failed to comply with "federally imposed conditions." *Id.* at 30 n.23. *Pennhurst* thus makes clear that the scope of the remedy must match the contours of the preemption in these cases, which stretches only as far as the state's acceptance of federal funding. It comes into play after a determination on the merits; it certainly does not serve as a threshold bar to suit.[6]

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[6] To the extent the majority opinion can be read to limit the remedy to offering the State a choice between assuming the additional cost of compliance or not using federal funds, *see id.* at 29, that is a question as to the scope of the remedy, not the right to seek relief in the first place. In any case, the majority's position is

Nor are Idaho and the Solicitor General correct to argue that the "broad and general" nature of the obligations imposed by Section 30(A) makes them inappropriate for an action seeking preemption. *See Douglas v. Indep. Living Ctr. of S. Cal., Inc.*, 132 S. Ct. 1204, 1210 (2012). In the first place, this critique goes not to *whether* a cause of action exists in the first place, but to the *scope* of judicial relief available. This Court expressly limited the question presented in this case only to the first issue, and thus the second is not presented here.

Moreover, as the Solicitor General concedes, Section 30(A)'s standards *are* enforceable in a judicial action where a State disagrees with the Secretary's disapproval of a State plan or amendment. *See* SG Br. 24. If they are discernable in that context, it is difficult to see how they are unenforceable in the context of a private suit. Any remaining concerns about the need for agency input should be allayed by HHS's ongoing rulemaking proceeding, which will result in a final rule providing guidance to the States in complying with Section 30(A). *See* SG Br. 10 n.4. As always, the agency's own interpretation will trump an inconsistent interpretation by a private party. *See, e.g., Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 983 (2005).

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entirely consistent with the dissent's explanation that courts can only prospectively compel states to abide by federal conditions so long as the state continues to accept funding. *See id.* at 53-54 (White, J., dissenting).

III. The History Of Section 30(A) Demonstrates With Particular Clarity That Congress Did Not Intend To Foreclose Actions Under The Supremacy Clause.

Because the history of Section 30(A) demonstrates that Congress consciously chose not to limit its means of enforcement, it would be particularly odd for the Court to rule that no private right of action is available to enforce that statute.

Section 30(A) in its current form dates back to 1989, and in the last 15 years it has been the subject of repeated, but unsuccessful, efforts in Congress to restrict private rights of action. These efforts stemmed from an earlier decision by this Court, *Wilder*, 496 U.S. at 509-10, which held that language similar to Section 30(A), known as the "Boren Amendment" was enforceable under Section 1983.[7]

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[7] The Boren Amendment provided that:

> a State plan for medical assistance must . . . provide . . . for payment . . . of the hospital services, nursing facility services, and services in an intermediate care facility for the mentally retarded provided under the plan through the use of rates (determined in accordance with methods and standard developed by the State . . .) *which the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities* in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards and to assure that individuals eligible for medical assistance have

Congress responded to this holding by considering whether to bar *all* private actions to enforce a state's payment rates under Medicaid, including those under Section 30(A). For example, in 1995, the President vetoed Congress's attempt to prohibit any "cause of action" to enforce a state's payment rates under Medicaid, H.R. 2491, 104th Cong. § 7002(b)(4) (1995).[8] Congress did not attempt to override this veto. *See* Jennifer Suttle, Cong. Research Serv., CRS Report for Congress: Balanced Budget Act of 1995: A Legislative History and Brief Summary of H.R. 2491 CRS-8 (1996). In 1996, the Senate initially attempted to bar private suits again, but Congress ultimately enacted a statute without any such provision. *Compare* S. 1956, 104th Cong. § 1508 (1996), *with* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105.

As the Solicitor General points out, Congress ultimately repealed the Boren Amendment in 1997. *See* Pub. L. No. 105-33, § 4711(a), 111 Stat. 251. But Congress did *not* repeal Section 30(A), nor did it add language restricting causes of action. This was no oversight. At the same hearing in which Congress heard criticism of the Boren Amendment, some witnesses also criticized litigation under Section 30(A),

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reasonable access to inpatient hospital services of adequate quality.

Wilder, 496 U.S. at 502-03 (emphasis added) (ellipses in original) (quoting 42 U.S.C. § 1396a(a)(13)(A) (1990)).

[8] President Clinton vetoed H.R. 2491 on December 6, 1995. Ann Devroy & Eric Pianin, *Clinton Vetoes GOP's 7-year Balanced Budget Plan*, WASH. POST, Dec. 7, 1995, at A1.

which they deemed a "Boren-like" provision. *See Medicaid Reform: The Governors' View, Hearing of the H. Comm. on Commerce, Subcomm. on Health and Env't*, 105th Cong. 21 (1997) (prepared statement of Govs. Bob Miller and Michael O. Leavitt); *Governors' Perspective on Medicaid, Hearing Before the S. Comm. on Fin.*, 105th Cong. 37 (1997) (prepared statement of Govs. Bob Miller and Michael O. Leavitt). That Congress left Section 30(A) undisturbed underscores the conclusion that private enforcement under the Supremacy Clause remains viable under that provision.

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Congress remains free to amend the Medicaid statute to shape or limit relief as Congress has done in other contexts when necessary. But there is nothing about Section 30(A) that makes it different from any of the other federal enactments that this Court has permitted to be enforced under the Supremacy Clause. Idaho agreed to provide a certain standard of benefits as a condition of receiving federal funds, and consistent with this Court's precedents, it is subject to equitable action if it fails to comply with those conditions.

CONCLUSION

For the foregoing reasons, the judgment of the Ninth Circuit should be affirmed.

Respectfully submitted,

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